

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

**EXECUTIVE SUMMARY ON
COUNTY AIR POLLUTION CONTROL PROGRAM REVISION**

Agenda # III, E-1

Agenda Item Summary: Request by the Department of Environmental Quality and Lewis and Clark County for approval of amendments to the Lewis and Clark County Clean Air Ordinance (“the Ordinance”).

List of Affected Rules: Lewis and Clark County Clean Air Ordinance.

Affected Parties Summary: The Ordinance applies to the greater Helena Valley area, including the cities of Helena and East Helena, as shown on the Air Quality Protection District map attached to the Ordinance. The amendments could affect any person within that area.

Scope of Proposed Proceeding: Public hearing before the Board of Environmental Review (“Board”) to consider approval of proposed amendments to the Ordinance. Lewis and Clark County does not contain any areas classified as nonattainment for the National Ambient Air Quality Standards. Therefore, the Ordinance is not part of the Montana Air Quality State Implementation Plan (SIP), and the hearing will not include submission of the Ordinance to the U.S. Environmental Protection Agency (EPA) as a proposed revision to the SIP.

Background: The Lewis and Clark County Ordinance, which regulates particulate matter, was adopted in 1986 under Section 75-2-301, MCA, and revised in 1990. Section 75-2-301(1), MCA, provides that a municipality or county may establish and administer a local air pollution control program if the program is consistent with the Clean Air Act of Montana, and is approved by the Board. Section 75-2-301(3)(a), MCA, provides that the Board may approve a local air pollution control program that: is compatible with, more stringent than, or more extensive than the Clean Air Act and rules adopted under that act; provides for enforcement by appropriate administrative and judicial processes; and provides for administrative organization, staff, financial resources and other resources necessary to effectively and efficiently carry out the program.

The Ordinance is consistent with the Clean Air Act of Montana and rules adopted under that act. The Lewis and Clark County air pollution control program and the Ordinance provide for enforcement by appropriate administrative and judicial processes, and provide for administrative organization, staff, financial resources and other resources necessary to effectively and efficiently carry out the program.

Under Section 75-2-301(3)(b), MCA, Board approval of a local program that is more stringent than the comparable state law is subject to the provisions of Section 75-2-207, MCA, which implements House Bill 521 from the 1995 Montana Legislature. The County is not proposing

any amendments to the Ordinance that would be more stringent than comparable state laws.

The proposed amendments include: restructuring the provisions of the Ordinance; updating references to the Administrative Rules of Montana; extending air quality monitoring to year-round from the current period of November 1 to March 1; extending public notice procedures and program restrictions from the current period of November 1 to March 1 to any time of year a poor air quality episode occurs; adding restrictions concerning open burning; increasing fines for violations; and making editorial revisions intended to clarify the Ordinance. The increase in fines is necessary to cover the program's costs during poor air quality episodes. Conducting year-round monitoring and extending public notice procedures and program restrictions to apply year-round will authorize the County to prohibit operation of woodstoves, except those covered by a variance, idling of diesel and locomotive engines for over two hours, intentional open burning, and operation of incinerators during episodes of poor air quality occurring between March 1 and November 1 from forest fires and dust.

Hearing Information: The program amendments were approved, after public notice and public hearings, by the Lewis and Clark County Board of Health, the Helena City Commission, the East Helena City Council, and the Lewis and Clark County Commission.

Board Options: The Board may approve the proposed amendments, disapprove of the amendments or approve some amendments and disapprove others.

DEQ Recommendation: The Department recommends that the Board conduct a hearing and provide an opportunity for public comment regarding Board consideration of the proposed amendments. Following the hearing, the Department recommends the Board issue an order approving the amendments.

Enclosures:

1. Existing Lewis and Clark County Clean Air Ordinance;
2. Proposed revised Lewis and Clark County Clean Air Ordinance, including a map of the Lewis and Clark County Air Quality Protection District; and
3. Draft Findings of Fact, Conclusions of Law and Order.